

# House Study Bill 175 - Introduced

HOUSE FILE \_\_\_\_\_  
BY (PROPOSED COMMITTEE  
ON COMMERCE BILL BY  
CHAIRPERSON LUNDGREN)

## A BILL FOR

1 An Act relating to unfair residential real estate service  
2 agreements, providing penalties, and making penalties  
3 applicable.  
4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1     Section 1. NEW SECTION.   **558B.1 Definitions.**

2     As used in this chapter, unless the context otherwise  
3 requires:

4     1. "*Consumer*" means a natural person being provided a  
5 service under a service agreement, or the natural person's  
6 legal representative.

7     2. "*Record*" means presentation of a document to a county  
8 recorder in this state for official placement in the public  
9 land records.

10    3. "*Residential real estate*" means real property located  
11 in this state which is used primarily for personal, family,  
12 or household purposes and is improved by one to four dwelling  
13 units.

14    4. "*Service agreement*" means a contract under which a person  
15 agrees to provide a service in connection with the maintenance  
16 of, the purchase of, or the sale of, residential real estate.

17    Sec. 2. NEW SECTION.   **558B.2 Unfair service agreements —**  
18 **penalties.**

19    1. A service agreement shall be considered unfair under this  
20 section if a service that is covered by the service agreement  
21 is not required to be completely performed within one year  
22 after the date on which the service agreement is executed, and  
23 the service agreement has any of the following characteristics:

24    *a.* The service agreement purports to run with the land or  
25 to be binding on future owners of interests in the residential  
26 real estate that is the subject of the service agreement.

27    *b.* The service agreement permits assignment of the right to  
28 provide service under the service agreement without requiring  
29 notice to, and the consent of, the owner of the residential  
30 real estate that is the subject of the service agreement.

31    *c.* The service agreement purports to create a lien,  
32 encumbrance, or other real property security interest on the  
33 residential real estate that is the subject of the service  
34 agreement.

35    2. If a service agreement is unfair under this section, the

1 service agreement shall be unenforceable.

2 3. If a person enters into an unfair service agreement  
3 with a consumer, the person commits an unlawful practice under  
4 section 714.16.

5 4. *a.* A person shall not record, or cause to be recorded,  
6 an unfair service agreement, or a notice or memorandum of an  
7 unfair service agreement.

8 *b.* A person who records, or causes to be recorded, a  
9 notice or memorandum of an unfair service agreement commits an  
10 aggravated misdemeanor.

11 *c.* A county recorder may refuse to record an unfair service  
12 agreement.

13 *d.* If an unfair service agreement is recorded, the recorded  
14 service agreement shall not provide actual or constructive  
15 notice against an otherwise bona fide purchaser or creditor,  
16 or actual or constructive notice against heirs or other  
17 successors-in-interest to the residential real estate that is  
18 the subject of the recorded service agreement.

19 *e.* If an unfair service agreement or a notice or memorandum  
20 of an unfair service agreement is recorded, any person with an  
21 interest in the residential real estate that is the subject  
22 of the service agreement may apply to a district court in the  
23 county in which the service agreement is recorded for a court  
24 order declaring the service agreement unenforceable.

25 *f.* If an unfair service agreement or a notice or memorandum  
26 of an unfair service agreement is recorded, any person with an  
27 interest in the residential real estate that is the subject  
28 of the recorded service agreement may recover actual damages,  
29 costs, and attorney fees as may be proven against the person  
30 who recorded the service agreement.

31 5. This section does not apply to any of the following:

32 *a.* A home warranty or similar agreement that covers the  
33 cost of maintenance for a fixed period of time of a major home  
34 system including but not limited to plumbing, electrical,  
35 heating, ventilation, or air conditioning.

1     ***b.*** An insurance contract.

2     c. An option or a right of refusal to purchase residential  
3 real estate.

4     *d.* A mortgage loan, or a commitment to make or to receive a  
5 mortgage loan.

6 e. A security agreement under the uniform commercial code  
7 related to the sale or rental of personal property or fixtures.

8     *f.* Water, sewer, electrical, telephone, cable, or any other  
9 regulated utility service providers.

10       6. This section shall not be construed to impair a person's  
11 rights established by a mechanics' lien under chapter 572.

12      Sec. 3. Section 714.16, subsection 2, Code 2023, is amended  
13 by adding the following new paragraph:

14 NEW PARAGRAPH. *g.* It shall be an unlawful practice for a  
15 person to violate section 558B.2, subsection 3.

| 16 | EXPLANATION |
|----|-------------|
|----|-------------|

17           The inclusion of this explanation does not constitute agreement with  
18           the explanation's substance by the members of the general assembly.

19       This bill relates to unfair residential real estate service  
20 agreements (agreement).

21 An agreement shall be considered unfair under the bill if a  
22 service that is covered by the agreement is not required to be  
23 completely performed within one year after the date on which  
24 the agreement is executed, and the agreement has any of the  
25 characteristics detailed in the bill. "Service agreement" is  
26 defined in the bill as a contract under which a person agrees  
27 to provide a service in connection with the maintenance of,  
28 the purchase of, or the sale of, residential real estate (real  
29 estate). "Residential real estate" is also defined in the  
30 bill.

31 If an agreement is unfair, the agreement shall be  
32 unenforceable. If a person enters into an unfair agreement  
33 with a consumer, the person commits an unlawful practice.  
34 Several types of remedies are available if a court finds that a  
35 person has committed an unlawful practice, including injunctive

1 relief, disgorgement of moneys or property, and a civil penalty  
2 not to exceed \$40,000 per violation.

3     The bill prohibits a person from recording or causing to be  
4 recorded an unfair agreement, or a notice or memorandum (memo)  
5 of an unfair agreement. A person that records, or causes to  
6 be recorded, a notice or memo of an unfair agreement commits  
7 an aggravated misdemeanor. An aggravated misdemeanor is  
8 punishable by confinement for no more than two years and a fine  
9 of at least \$855 but not more than \$8,540.

10     A county recorder may refuse to record an unfair agreement.  
11 If an unfair agreement is recorded, the recorded agreement  
12 shall not provide actual or constructive notice against an  
13 otherwise bona fide purchaser or creditor, or against heirs  
14 or other successors-in-interest to the real estate that is  
15 the subject of the agreement. If an unfair agreement or a  
16 notice or memo of an unfair agreement is recorded, any person  
17 with an interest in the real estate that is the subject of  
18 the agreement may apply to a district court in the county in  
19 which it is recorded for a court order declaring the agreement  
20 unenforceable, and any person with an interest in the real  
21 estate that is the subject of the agreement may recover actual  
22 damages, costs, and attorney fees as may be proven against the  
23 person that recorded the agreement.

24     The bill does not apply to a home warranty or similar  
25 agreement, an insurance contract, an option or right of refusal  
26 to purchase real estate, a mortgage loan or a commitment to  
27 make or receive a mortgage loan, a security agreement under  
28 the uniform commercial code relating to the sale or rental of  
29 personal property or fixtures, or to regulated utility service  
30 providers. The bill shall also not be construed to impair a  
31 person's rights established by a mechanics' lien.